

MINUTES
TEXAS BOARD OF PROFESSIONAL ENGINEERS
REGULAR QUARTERLY BOARD MEETING
1917 SOUTH INTERSTATE 35
AUSTIN, TX 78741
NOVEMBER 29, 2012 – 10:30 AM

Call to Order. James “Jim” Greer, P.E., Acting Presiding Officer, called the Regular Quarterly Board meeting of the Texas Board of Professional Engineers (TBPE) to order at 10:32 a.m. on November 29, 2012, at the Texas Board of Professional Engineers, 1917 South Interstate 35, Austin, TX. (NOTE: All votes are unanimous, unless noted otherwise.)

1. Roll Call and Welcome Visitors.

G. Kemble Bennett, Ph.D., P.E.	Chair (excused absence)
James “Jim” Greer, P.E.	Vice Chair
Daniel O. Wong, Ph.D., P.E.	Secretary
Edward Summers, Ph.D.	Treasurer
Carry Ann Baker	Public Member
Lamberto “Bobby” Ballí, P.E.	Member
Sockalingam “Sam” Kannappan, P.E.	Member
Gary Raba, P.E.	Member (excused absence)
Elvira Reyna	Public Member

A quorum was present. Ms. Veena Mohan, Assistant Attorney General, was present to provide legal counsel to the Board. Mr. Edmundo Gonzalez, Jr., P.E., Emeritus Board Member was present.

The following staff members were present:

Lance Kinney, P.E.	Executive Director
Priscilla Pipho, MPA	Deputy Executive Director
David Howell, P.E.	Director of Licensing
C.W. Clark, P.E.	Director of Compliance & Enforcement
Jeff Mutscher	Director of Finance
Janet Sobieski	Director of IT
Dewey Helmcamp, III JD	Staff Attorney
Dorothy Gonzales	Executive Assistant

Visitors. Terry Bilderback, P.E., Texas Society of Professional Engineers (TSPE); Doug Bell, P.E., TSPE; Jennifer McEwan, TSPE; Peyton McKnight, American Council of Engineering Companies - Texas (ACEC)

2. Public Comment. None.

3. Consent Agenda.

(The following items may be acted upon under Consent Agenda and are marked with an asterisk* on the Regular Quarterly Board Meeting Agenda)

- June 12, 2012, TBPE/TBAE Task Force Minutes
- August 15, 2012, Licensing Committee Minutes
- August 16, 2012, Policy Advisory Opinion Committee Minutes
- August 16, 2012, Legislative Issues Committee Minutes
- August 16, 2012, Enforcement Committee Minutes
- August 16, 2012, Nominating Committee Minutes
- August 16, 2012, General Issues Committee Minutes
- August 16, 2012, Regular Quarterly Board Meeting Minutes
- Administrative Reports and Outstanding Administrative Penalties and Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments
- Licensing Applications.

It was MOVED/SECONDED (Summers/Ballí) to approve the Consent Agenda as submitted. A vote was taken and the MOTION PASSED.

Discuss and Possibly Approve Board Minutes:

4. ***(Consent Agenda)** Discuss and possibly approve minutes of the August 16, 2012, Regular Quarterly Board Meeting Minutes

Discuss and Possibly Accept Committee Minutes:

5. ***(Consent Agenda)** June 12, 2012, TBPE/TBAE Task Force Minutes
6. ***(Consent Agenda)** August 15, 2012, Licensing Committee Minutes
7. ***(Consent Agenda)** August 16, 2012, Policy Advisory Opinion Committee Minutes
8. ***(Consent Agenda)** August 16, 2012, Legislative Issues Committee Minutes
9. ***(Consent Agenda)** August 16, 2012, Enforcement Committee Minutes
10. ***(Consent Agenda)** August 16, 2012, Nominating Committee Minutes
11. ***(Consent Agenda)** August 16, 2012, General Issues Committee Minutes

Agenda items 4-11, were approved on Consent Agenda, see above.

Discuss and Possibly Act on the following agenda items (12-15):

12. Board Members' Activity Reports.

- Bennett
- Baker
- Ballí
- Greer
- Kannappan
- Raba
- Reyna
- Summers
- Wong

Mr. Greer commented that the activity reports were submitted as an information document only, no action required.

13. Emeritus Members' Activity Reports.

- Gonzalez
- Guerra
- Nadkarni

Mr. Greer commented that the activity reports were submitted as an information document only, no action required.

Mr. Gonzalez commented that the ABET accredited visit that he was involved with was moved back two weeks due to the inclement weather. He added that the Texas Board of Professional Surveying approved his lesson plan for 4 hours of continuing education credits for surveyors.

14. Budget. Mr. Mutscher reported on the following:

- **FY12 4th Quarter Budget Report.** TBPE reviewed the 4th Quarter Budget report which was included as an exhibit. He commented that the Board year ended with a positive variance.
- **Annual Financial Report (AFR).** This report was also included as an exhibit. It was submitted to oversight agencies and the Comptroller's Office as required. Pages 2-3 show the agency's financial information. Dr. Summers added that he has reviewed the report last month. Dr. Summers asked for Board member feedback on this report. Mr. Greer commended Mr. Mutscher on a job well done.
- **2013 Internal Audit Plan.** Mr. Mutscher commented that the Board is required to conduct an internal audit. The areas that would like to focus on are the HR processes and documentation processes. The 2013 audit plan is included for approval.

It was MOVED/SECONDED (Ballí/Baker) to approve the 2013 audit plan as submitted. A vote was taken and the MOTION PASSED.

15. **Performance Measures.** Mr. Howell reviewed the performance measures which were included as an exhibit. He commented that because we are SDSI, we are not required to report measures to the Legislative Budget Board (LBB). He added that as part of the on-going strategic initiatives, staff is working on reviewing and revising all performance measures to identify key measures and make them more useful to agency functions. Board members commented this was a great tool when measuring average time on projects. Dr. Summers asked that the performance measures include how the measure is used and the importance to the agency. Mr. Howell responded that this is the goal of the current performance measure revision project. Mr. Greer asked how many performance measures are required for SDSI. Mr. Howell responded that seven of the performance measures are required to be reported for SDSI compliance. Mr. Kinney added that the Board has gone above-and-beyond on the required measures.

Discuss and Possibly Act on Issues Regarding Committee Reports or Items on the Committee Agendas:

16. **Legislative Committee.** Mr. Greer reported that the Committee was informed about lobbying and other legislative activities by Board members. Ms. Mohan stated that a Board member is not prohibited by from lobbying on behalf of the agency, even if they use their authority as a board member to do so. However, the Board member should be mindful of the number of limitations of their activities as a lobbyist. First because an agency may not use appropriated funds to lobby the Legislature, the Board member should avoid seeking reimbursement for his/her expenses incurred from activities. Second the Board member should be aware of the general provisions requiring lobbyist to register in particular the \$500 per calendar quarter of expenditures for non-registered lobbyist. Finally, the Board member should not engage in lobbying that involves partisan or electoral politics; this is typically in candidate races. Mr. Greer commented that Mr. Kinney was going to summarize and send out to all Board members. Mrs. Pipho gave a summary of the Legislative Conference that occurred in October; an exhibit is included for the Board members to review. She added that currently the Board is tracking six bills. Mr. Greer reported that Mr. Mutscher gave a brief summary on the \$50 that is transferred to the Education Fund from the \$200 fee imposed on licensees.

17. **Enforcement Committee.**

- Discuss and possibly act on the following rule adoptions: Dr. Wong reported on the following. He added that the rules were posted in the Texas Register and no comments received.
 - §137.7 License Expiration and Renewal.
 - §137.31 Seal Specifications.
 - §137.37 Sealing Misconduct.
 - §137.65 Action in Another Jurisdiction.

It was MOVED/SECONDED (Wong/Summers) to approve §§137.7, 137.31, 137.37, 137.65 as submitted. A vote was taken and the MOTION PASSED.

- **Staff Attorney Reports.** Mr. Helmcamp reported that the reports are provided as an exhibit. At present time there is only one hearing scheduled in SOAH in January 2013. There are no pending cases.

18. **General Issues Committee.** Mr. Greer reported that most of the items will be covered by Mr. Kinney in his general report. Mr. Greer asked Mr. Kinney to report on the building maintenance. Mr. Kinney reported that this project is on-going. There are two staff committees reviewing building security, lobby redesign, and looking at cleaning up.

19. **Licensing Committee.**

- **Personal Appearances from Licensing Applicants.**

Mr. Ballí reported that the Committee had 12 scheduled personal interviews and one person did not appear.

It was MOVED/SECONDED (Ballí/Kannappan) to allow the following individuals to sit for the PE exam; Mr. Richard Bard, Mr. Matthew Burnett, Ms. Darcy Hernandez, Ms. Lauren King, Mr. Joshua Valenta, Mr. Thomas Watson, and Mr. Brandon White. The following will be allowed to sit for the exam after successfully completing a prescribed ethics course: Mr. Harold Brady, Mr. Anthony Burson, and Mr. Peter Vo. The Committee recommends that Mr. Vern Coyner be relicensed in Texas. Mr. Michael Shelton did not show up, and action on his request tabled. A vote was taken and the MOTION PASSED.

Discuss and Possibly Act on Reports or Items reported by the Executive Director:

20. Executive Director's Report. Mr. Kinney reported on the following:

- **Activity Report.** He commented that the report is included as an exhibit for members to review.
- **Update on Hemphill Public Comment.** The summary of the public comments was submitted to the Board along with staff's responses to each item as directed.
- **Engineers & Architects update.** The Task Force is continuing to work through recommendations from HB2284. The approval and review of all PEs have been completed; there was one person, Mr. Scales, who went to SOAH, and SOAH ruled that he should be added to the list of PEs who can practice architecture in Texas.

Mr. Greer mentioned that Ms. Mohan needed to leave the meeting; another attorney has been sent to replace her for the rest of the meeting. He also commented that agenda item #25 will be taken out of order. Mr. Greer requested a 15-20 minute break to allow Ms. Mohan to bring her replacement up to speed.

Mr. Greer, Acting Chair requested a break at 11:20 am.

Mr. Greer, Acting Chair reconvened the meeting at 11:34 am

Mr. Greer welcomed Ms. Melissa Juarez, Assistant Attorney General, who is replacing Ms. Mohan. Agenda item #25 taken out of order, see below.

- **Windstorm Inspection Update.** Mr. Howell reported that there is an on-going process in place.. HB3 passed in the special session in 2011 requiring the Board to create a rosters of PEs that are qualified to be appointed as windstorm inspectors by the Texas Department of Insurance (TDI). There are currently approximately 800 PEs on the TDI inspector roster. TBPE has an implemented an application process where engineers can provide evidence of competence in wind-related building design. Once they complete all the requirements, they are place on the TBPE roster then they have to apply to be on the TDI roster. TBPE does not have a deadline but TDI has a December 2012 deadline. There are currently 100+ PEs on the roster.
- **NCEES August 2012 Annual Meeting Update.** Mr. Kinney reported that this was a good meeting and handouts are included as exhibits. The CBT Task Force had several motions; NCEES council unanimously voted to move the PE and PS exams to computer based testing in the future. This completes the moving forward of all the exams to be CBT. Another issue was Industrial Exemptions and there was a vote and modification to NCEES Model Law. In this case, the By including some of the things that engineers are in charge of, the industrial exemption is starting to be addressed at least on a Model Law standpoint. Mr. Ballí commented that he enjoyed the process that all states follow. He added that next year the annual meeting will be held in San Antonio. Mr. Guerra added that Mr. Ballí did a great job in promoting the annual conference in San Antonio.
- **Journey Toward Excellence.** This is the Malcolm Baldrige internal process the agency is implementing and the direction we are taking with the Strategic Plan.
 - **Staff Development Day.** Staff met offsite and was involved in staff training, development, and invited a recipient of the Malcolm Baldrige award to speak to staff and share their ideas and journey. It was very productive and staff enjoyed it.
- **Strategic Plan Update.** Mrs. Pipho reported on the ideas discussed at the agency staff retreat and how the management team is incorporating them into our current practices. She added that all staff members are involved in the strategic plan. Lots of projects, engaging staff, and keeping busy. Staff is

taking its time to ensure we get things done correctly. All the process reported on previously are incorporated into the strategic plan.

- **Sunset Review Update.** Mr. Kinney reported that the Board had a very brief presentation before the Sunset Commission. It was received well and no questions were asked. Step two is for the Board to go back before the Commission in December for the final decisions.
- **Outreach.** Mr. Kinney thanked everyone for all their efforts for making all the presentations. Kudos are included for the Board to review. The outreach presentation will be modified in the near future. We are also looking at other ways to reach audience.
- Kudos

Discuss and Possibly Act on Enforcement/Disciplinary Matters:

21. *(Consent Agenda) Administrative Reports, Outstanding Administrative Penalties Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments.

- Engineering Roof, LLC

Agenda item #21 was approved under Consent Agenda, see above.

22. Bryan Martin – D-33900 - Revocation based on Incarceration.

It was MOVED/SECONDED (Wong/Baker) to approve the Agreed Board Order as submitted for Mr. Bryan Martin. A vote was taken, and the MOTION PASSED.

23. Agreed Board Order.

1. D-33570 (Wong)
2. D-33332 (Wong)
3. David A. Baggs, P.E., D-33366 (Wong)

It was MOVED/SECONDED (Summers/Ballif) to approve the Agree Board Orders for D-33570; D-33332; and David A. Baggs, P.E., D-33366 as submitted. MOTION PASSED 7 to 1 abstained; Dr. Wong abstained from voting on any actions on these Agreed Board Orders.

24. Consent Orders.

SOAH Result

(None)

Informal Reprimands (In accordance with Board Rule 139.31(b) individual names are not listed)

(None)

Practice Violations

4. Carl Mattern, Jr., P.E. – D-33367
5. Michael C. Rothmann, P.E. – D-33365

Non-Practice Violations

6. Larry W. Lang, P.E., D-33489 (Surrender)

Sanctions Against Non-License Holders

(None)

Firm Registrations/Sole Proprietorship Sanctions

7. OJD Engineering, LP, B-33759
8. Rey Engineering, B-33736

It was MOVED/SECONDED (Summers/Wong) to approve the Consent Orders as submitted. A vote was taken and the MOTION PASSED.

Discuss and Possibly Act on personal appearance for reconsideration of denial of application:

25. **Larry Fabian.** Mr. Fabian applied to be relicensed in Texas. He allowed his previous license to lapse. He applied last year for re-licensure with the PE exam waiver which is allowed under rule. He was referred to the Licensing Committee because of criminal incidents on his record. Mr. Fabian appeared before the Licensing Committee in August 2012 and his application was denied. This appearance was an appeal of that denial. Mr. Fabian provided additional references that are included in his file.

Mr. Fabian thanked the Board members for allowing him to readdress his case. He commented that a seven page document is included for the Board to review regarding the incident in question. He added that he had a license that he allowed to lapse. He believes he meets all the requirements. He shared his requirements with the Board. After review of all the information submitted by Mr. Fabian, and further discussion with him, the Board made a decision.

It was MOVED/SECONDED (Ballí/Wong) to deny Mr. Fabian's request for reconsideration of the denial of Licensing Committee in August 2012 to get relicensed in Texas. A vote was taken and the MOTION PASSED.

Mr. Greer returned to agenda item #20, see above.

Discuss and Possibly Act on Licensing Applications requiring board ruling:

26. *(Consent Agenda) Licensing Applications.

Vote or Reconfirm Votes Pursuant to Board Rule §133.87:

- Approved for Licensure
- Not Approved for Licensure
- Waivers – Both
- Waivers – FE
- Waivers—PE
- Approved for Exams
- Exams not Approved
- Firms Approved

Agenda item #26 was approved under Consent Agenda, see above.

Discuss and Possibly Act on Other Matters

27. Issues from Board members for future meetings.

Possible discussion on time limits on personal appearances before the full Board.

28. Future TBPE meeting dates.

- 2013 Meeting dates

Mr. Kinney commented that the FY2013 meeting dates were included for Board members' convenience.

Adjourn.

It was MOVED/SECONDED (Wong/Ballí) to adjourn the meeting at 1:06 pm. A vote was taken, and the MOTION PASSED.

Date Board approved as submitted:

February 14, 2013